

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

DERRICK L. JOHNSON,

Petitioner,

: Case No. 3:15-cv-090

- vs -

District Judge Walter H. Rice
Magistrate Judge Michael R. Merz

CHARLES BRADLEY¹, Warden,
Pickaway Correctional Institution,

:

Respondent.

REPORT AND RECOMMENDATIONS ON RECOMMITTAL

This habeas corpus case is before the Magistrate Judge on recommitment from Judge Rice to address the issues raised by Petitioner's Objections (ECF No. 42) to the Magistrate Judge's Report and Recommendations (ECF No. 41) recommending denial of Petitioner's Motion to Vacate (ECF No. 40).

On the same day as he filed his Objections, Petitioner also filed a Motion to Amend or for Relief from Judgment in which he raised the same issues raised in the Objections. Those issues are dealt with in the Magistrate Judge's Report on the Motion to Amend (ECF No. 44). Because the Objections and the Motion to Amend essentially duplicate each other, no further analysis is needed.

It is therefore again respectfully recommended that the Motion to Vacate (ECF No. 40) be denied. Because reasonable jurists would not disagree with this conclusion, Petitioner should

¹ Mr. Bradley is the current Warden at Petitioner's place of confinement and is therefore substituted as Respondent in this case; the caption is amended as set forth above. Fed. R. Civ. P. 25.

be denied a certificate of appealability and the Court should certify to the Sixth Circuit that any appeal would be objectively frivolous and therefore should not be permitted to proceed *in forma pauperis*.

November 7, 2017.

s/ ***Michael R. Merz***
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to seventeen days because this Report is being served by mail. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 153-55 (1985).